IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24541 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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MANUBHAI ALIAS MANOJ BHAGWANDAS PATEL - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR MANOJ S JOSHI for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1 - 3.
RULE SERVED BY DS for Respondent(s) : 1 - 2.
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 17/01/2006

ORAL JUDGMENT

1. Manubhai alias Manoj Bhagwandas Patel, petitioner-detenu has filed this habeas corpus petition under

Article 226 of the Constitution of India for quashing and setting aside the order of detention dated 2/9/2005 passed by the Police Commissioner, Ahmedabad under the provisions of PASA Act. Petition was filed on 23/12/2005. Petitioner-detenu was presented before this Court. On 26/12/2005, this Court (Coram:K.M.Mehta,J.) has issued rule which is returnable on 16/1/2006. On behalf of respondent, Mr.L.R.Pujari, learned APP appears. Therefore, with consent of parties, matter has been placed for final hearing today before this Court.

2. Mr.Manoj S. Joshi, learned advocate appears for the petitioner-detenu. The learned advocate has invited my attention to the order of detention dated 2/9/2005 passed by the authority under the provisions of PASA Act. He has also invited my attention to the order of committal dated 2/9/2005 by which petitioner-detenu has been sent to Surat jail on the same day. The learned advocate has also invited my attention to the grounds supplied by the authority to the petitioner-detenu on 2/9/2005. From the grounds of detention, it revels that petitioner-detenu has committed offence at West Prohibition Station in connection with Cr. Case No.1414 of 2005 dated 30/8/2005 under the provisions of Section

66(B), 65(A)(E), 81, 83 and 116(B) of the Bombay Prohibition Act. It is alleged that petitioner has kept 190 bottles of country made liquor valued at Rs.76,000/-, Tata Sumo Car valued at Rs.4,50,000/-, Bajaj City Bike valued at Rs.30,000/- and one mobile phone valued at Rs.10,000/-.

3.It was also alleged that petitioner is carrying on an anti social activities and as carrying on business of liquor, he is 'bootlegger' under the provisions of the PASA Act as the activities of the petitioner affects the public health in this behalf.

4.Mr.Manoj Joshi, learned advocate for the petitioner stated that the authority could not pass the order of detention under the provisions of PASA Act as there may be violation of law and order situation but there is no question of violation of public order. The learned advocate for the petitioner has stated that the authority has not properly arrived at subjective satisfaction in this behalf. In support of the same, the learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of Piyush Kantilal Mehta and also relied upon judgment of the Division bench of this Court (Coram:M.R.Calla and R.R.Tripathi,

J.J.) in Letters Patent Appeal 223 of 2000 in Special Civil Application No.554 of 2000 in the case of Ashok Balabhai Makwana and judgment of the Division Bench of this Court (C.K.Thakkar, Acting C.J. and K.M.Mehta, J.) in the case of v. Police Commissioner, reported in 2000 (1) GLR 816, particularly para 21. The learned advocate for the petitioner has also relied upon judgment in the case of Darpankumar Sharma v. State of Tamil Nadu, reported in AIR 2003 SC 971.

5. On behalf of respondent, Mr.L.R.Pujari, learned APP appears. He has relied upon the order of detention passed by the authority and on the grounds stated therein. The authority has not filed affidavit.

6. Having heard the learned counsel for both the parties, in my considered view, the detaining authority has passed the order of detention without there being any credible and cogent material in this behalf. Contentions of the petitioner are squarely covered by the decisions of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and Division Bench Judgment of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in the case of Ashokbhai Balabhai Makwana (supra), another division bench judgment of

this Court (C.K.Thakkar, Acting C.J. and K.M.Mehta, J.) in the case of Ashokbhai Jivrajbhai (supra) and judgment in the case of Darpankumar Sharma (supra). And therefore, the order of detention is required to be quashed and set aside.

7. Having heard the rival submissions of the parties and perused the records of the case, I am of the view that only registration of criminal cases under the Prohibition Act alone cannot be said to be sufficient enough to arrive at the subjective satisfaction to the effect that the activities of the detenu are prejudicial to the public order. The power to detain a person under the PASA Act is not based on simple facts about registration of crimes under the Prohibition Act. There has to be nexus and link for such activities which disturb the public order. The activities of the detenu must in the backdrop of the facts, reflect that such activities disturbed the even tempo or normal life of the community in the locality or disturbed general peace and tranquility or create a sense of alarm and insecurity in the locality. On careful perusal of the grounds of detention order and relying upon the judgment of the Supreme Court in Piyush Kantilal Mehta (supra), judgment and order dated 22/8/2000 of the

Division Bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. No.554 of 2000, judgment of Division Bench of this Court (Coram:C.K.Thakkar, Acting C.J. and K.M.Mehta,J.) in the case of Ashokbhai Jivrajbhai and Special Civil Application No.20420 of 2005 decided by this Court (Coram:K.M.Mehta, J.) on 15/11/2005, in my view, it cannot be said that the activities of the detenu are prejudicial to the public order. Therefore, the order of detention passed by the detaining authority cannot be sustained and is required to be quashed and set aside.

8.I have considered the facts and circumstances of the case in view of the submissions made by the learned counsel for the petitioner, judgment of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and judgment in Letters Patent Appeal (supra) and other judgment cited by the petitioner. Considering all these, I am of the view that the activities of the petitioner may affect law and order situation and not affect the public order and therefore, subjective satisfaction arrived at by the authority is not legal and valid. Therefore, the order of detention passed by the authority is required to be quashed and set aside.

9.In the result, I am of the view that the order of detention cannot be sustained by law. I hereby quash and set aside the order of detention. Petition is allowed. Manubhai @ Manoj Bhagwandas Patel, detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

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